

REMARKS

The pending Office Action addresses claims 37 to 102, of which claims 37 to 72 are withdrawn. Applicants hereby expressly cancel withdrawn claims 37 to 72 and the canceled status is noted on the amended claims above. Applicants very much appreciate the Examiner's rejoicing of previously withdrawn claims 90 to 102.

Claim Amendments Made Herein

Applicant's amend claims 73 and 90 herein. Claim 73 is amended to remove the word mammalian from the last line of the claim and merely clarifies a previous amendment. Claim 90 is amended to correct a typographical error in the recitation "cryopreserving."

Claim Objections

The Examiner objects to claims 90 to 102 because of a typing error in the phrase "cryopreserving" in step c) of claim 90. Applicants amend that phrase herein to correct the error.

Claim Rejections – 35 USC §112

Applicants appreciate the Examiner's withdrawal of the previous 35 USC §112, first paragraph, in light of Applicants previous response and declaration.

The Examiner now states:

Claims 73-89 as amended remain rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention. . . . Claim 73 as amended recites the limitation "mammalian nucleated cells" in the last step d. There is insufficient antecedent basis for this limitation in the prior step and in the preamble of the claimed method.

The effort to correct the antecedent basis for the phrase "nucleated" cells in response to the last office action is noted. However, claim 74 as amended now fails to further limit the claimed invention because it is drawn to preserving the same mammalian nucleated cells as

in claim 73.

Before the previous response, step d) of claim 73 erroneously recited "mammalian cells" where "nucleated cells" was intended in keeping with the antecedent basis for nucleated cells throughout claim 73 (see the preamble and steps a), b), and c) of claim 73, all of which recite "nucleated cells"). In the previous response, Applicants amended step d) of claim 73 to recite "nucleated cells" in place of "mammalian cells," however, a typographical error in the amendment confused the amendment. The amendment as filed acted on the recitation of "mammalian cells" in step d) as follows:

mammalian nucleated cells

This was obviously a typographical error as the word "mammalian" could not be added where it already existed; the word "mammalian" was meant to be stricken out and only the word "nucleated" added. This is clear from Applicants' remarks in that amendment:

In response, Applicants have amended claim 73 to recite a "the nucleated cells" in step (d), for which antecedent basis is present in the preamble of the claim. The claim has also been amended to recite "a cellular material" in step (b) and reference to the term "sufficient" has been removed from the claim. In addition, the typographical error has been corrected. Accordingly, the rejections with regard to this claim are rendered moot.

While Applicants apologize for any confusion created by the typographical error in the previous amendment, it has always been clear that claim 73 is directed to "a method for preserving nucleated cells," and that clarity is now reinforced by the amendment to claim 73 provided above. The present amendment also addresses the rejection of claim 74 as it adds the recitation that the nucleated cells of claim 73 are mammalian nucleated cells.

The Examiner also states that "[i]n the last and in the instant office action claims 73-89 are interpreted as drawn to preserving **mammalian nucleated cells**." This is not correct. In fact, in the last office action, the Examiner expressly stated in the context of a double patenting rejection that "*some of the claims* of the present invention are broader and *are not limited to* storing and preserving of **mammalian cells** . . ." It cannot be that the only independent claim

considered was interpreted as being drawn to preserving mammalian nucleated cells and that some of the claims were not limited to preserving mammalian cells. Again, Applicants apologize for any confusion created by the typographical error in the previous amendment, but it has always been clear that claim 73 has been directed to a method for preserving nucleated cells.

Double Patenting

The Examiner rejects claims 73-89 and 90-102 under the judicially created doctrine of obviousness-type double patenting over claims 1-13 of U.S. patent no. 6,127,177. Applicants disagree with this rejection, however, in an effort to expedite the prosecution of this application, Applicants submit herewith a terminal disclaimer for the purpose of obviating the rejection.

Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

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Respectfully submitted,

By

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